

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SOFTWARE FREEDOM CONSERVANCY, INC.  
and ERIK ANDERSEN,

09-CIV-10155 (SAS)

Plaintiffs

-against-

**ANSWER OF  
PHOEBE MICRO, INC.**

BEST BUY CO. INC.; SAMSUNG ELECTRONICS  
AMERICA, INC.; WESTINGHOUSE DIGITAL  
ELECTRONICS, LLC; JVC AMERICAS CORP;  
WESTERN DIGITAL TECHNOLOGIES, INC;  
ROBERT BOSCH, LLC; PHOEBE MICRO, INC.;  
HUMAX USA, INC.; COMTREND CORPORATION  
DOBBS-STANFORD CORPORATION; VERSA  
TECHNOLOGY INC.; ZYXEL COMMUNICATIONS  
INC.; ASTAK INC.; and GCI TECHNOLOGIES  
CORPORATION,

Defendants

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Defendant Phoebe Micro, Inc. ("Phoebe Micro"), by and through its attorney,  
Andrew M. Kaver, Esq., hereby demands a jury trial on all issues to triable and, as and  
for its Answer, alleges as follows:

1. To the extent a response is required to the unnumbered paragraphs  
preceding Paragraph 1 of the Complaint, Phoebe Micro, on information and belief, denies  
the allegations concerning it and denies knowledge or information sufficient to respond to  
the allegations concerning plaintiffs or any other defendant.

2. Denies knowledge or information sufficient to respond to the allegations  
of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16 of the Complaint.

3. Denies the allegations of Paragraph 9, except admits that Phoebe Micro is  
a California corporation.

4. Denies knowledge or information sufficient to respond to the allegations of Paragraphs 17, 18 and 19 of the Complaint insofar as other defendants are concerned but admits that, insofar as the allegations of the Complaint as to it are concerned, Phoebe Micro does not contest the jurisdiction of the Court or venue in this district.

5. Denies the allegations of Paragraph 20 of the Complaint insofar as they assert that Plaintiff Andersen is the sole author and developer of the BusyBox computer program and further denies knowledge or information sufficient to respond to the characterizations of BusyBox as extremely customizable, fast and flexible or as to the nature or extent of its use in products.

6. Denies knowledge or information sufficient to respond to the allegations of Paragraphs 21, 22, 23, 24 and 25 of the Complaint, except admits that distribution of some versions of BusyBox purportedly occurs pursuant to the GNU General Public License, Version 2, and respectfully refers the Court to the entire license for the terms and conditions thereof.

7. Denies the allegations of Paragraph 26 of the Complaint insofar as they assert that Phoebe Micro sells or has distributed a version of BusyBox in which plaintiff Andersen possesses a copyright, and further denies knowledge or information sufficient to respond to the allegations of Paragraph 26 of the Complaint insofar as they concern any other defendant.

8. Denies the allegations of Paragraph 27 of the Complaint insofar as they allege that Phoebe Micro sold or distributed firmware that is not in compliance with the GNU General Public License, Version 2, as pertains to its Airlink101 AR670W and AR690W wireless routers and Airlink101 AICAP650W IP Motion Wireless Camera, and

further denies that its Airlink101 AR670W and AR690W wireless routers and Airlink101 AICAP650W IP Motion Wireless Camera firmware embodies a version of BusyBox software in which plaintiff Andersen possesses a copyright, and further denies knowledge or information sufficient to respond to the allegations of Paragraph 27 of the Complaint insofar as they concern any other defendant.

9. Denies the allegations of Paragraph 28 of the Complaint insofar as they allege that Phoebe Micro sold or distributed firmware that is not in compliance with the GNU General Public License, Version 2, as pertains to its Airlink101 AR670W and AR690W wireless routers and Airlink101 AICAP650W IP Motion Wireless Camera, and further denies that its Airlink101 AR670W and AR690W wireless routers and Airlink101 AICAP650W IP Motion Wireless Camera firmware embodies a version of BusyBox software in which plaintiff Andersen possesses a copyright, and further denies knowledge or information sufficient to respond to the allegations of Paragraph 28 of the Complaint insofar as they concern any other defendant, and with regard to the allegations of Paragraph 28 concerning the GNU General Public License, Version 2, respectfully refers the Court to the entire license for the terms and conditions thereof.

10. Denies the allegations of Paragraph 29 of the Complaint insofar as Phoebe Micro is concerned, and denies knowledge or information sufficient to respond to the allegations of Paragraph 29 of the Complaint insofar as they concern any other defendant.

11. Repeats and realleges its answers to Paragraphs 1 to 29 of the Complaint, set out above, as if repeated at length, and further responds that Paragraph 30 of the Complaint contains no substantive allegations and therefore requires no response.

12. Denies knowledge or information sufficient to respond to the allegations of Paragraph 31 of the Complaint.

13. Denies the allegations of Paragraphs 32, 33, 34 and 35 of the Complaint insofar as they concern Phoebe Micro, and denies knowledge or information sufficient to respond to the allegations of Paragraphs 32, 33, 34 and 35 of the Complaint insofar as they concern any other defendant.

### **AFFIRMATIVE AND ADDITIONAL DEFENSES**

Phoebe Micro, as and for affirmative and additional defenses, alleges as follows:

1. The Complaint fails to state a claim on which relief can be granted.
2. The GNU General Public License, Version 2, as alleged by Plaintiffs, is not enforceable.
3. On information and belief, Plaintiffs are not proper parties.
4. Plaintiffs are not entitled to assert a claim for statutory damages against Phoebe Micro under 17 U.S.C. § 504(c).

### **PRAYER FOR RELIEF**

WHEREFORE, defendant Phoebe Micro respectfully requests that the Court enter judgment in its favor, against Plaintiffs:

1. Dismissing the Complaint against Phoebe Micro in its entirety, with prejudice, and denying all relief sought by Plaintiffs against Phoebe Micro;
2. Awarding Phoebe Micro its reasonable attorneys' fees and costs of this action pursuant to 17 U.S.C. § 505; and

3. Granting Phoebe Micro such other and further relief in its favor as this Court deems just and proper.

Dated: New York, NY  
February 1, 2011

Respectfully submitted,

Law Office of Andrew M. Kaver

/s/ Andrew M. Kaver

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